Petition

81-1292

Office - Supreme Court, U.S.
FILED
7
JAN 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No.

MARK GRANATO,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION—SECOND DEPARTMENT

STANLEY M. MEYER
Attorney for Petitioners
16 Court Street
Brooklyn, New York 11241
(212) 834-8888

MEYER, LIGHT & LONDON
Of Counsel

TABLE OF CONTENTS

PAGE

Questions Presented..... 1-3

Jurisdiction..... 3

Constitutional Provisions Involved..... 3

FACTS:

GRANATO..... 4-9

ARGUMENT:

POINT I:

THE PLEA MINUTES CONCLUSIVELY DEMONSTRATED THAT THERE WAS AN INSUFFICIENT FACTUAL BASIS FOR THE ENTRY OF THE PLEAS HEREIN. COUNSEL'S MOTION MADE AT SENTENCE TO WITHDRAW THE PLEA SHOULD HAVE BEEN GRANTED..... 9-19

Conclusion..... 19

Order dated April 20, 1981..... 20-21

Certificate Denying Leave..... 21

TABLE OF AUTHORITIES

PAGE

Adkins v. United States, 298 F.2d 842, cert. den. 370 U.S. 954 (8th Cir. 1962)..... 19

Boykin v. Alabama, 395 U.S. 238 (1969)..... 19

Domenica v. United States, 292 F.2d 483, (1st Cir. 1961)..... 19

Edwards v. United States, 256 F.2d 707, (D.C. Cir. 1958)..... 19

People v. Beasly, 25 N.Y.2d, 483 (1969)..... 12

People v. Cullen, 57 A.D.2d 903 (Second Dept. 1977)..... 17

People v. Ellsworth, 57 A.D.2d 768 (First Dept. 1977)..... 16

People v. Etoli, 57 A.D.2d 973 (Third Dept. 1977)..... 18

People v. Gina, M.M., 40 N.Y.2d, 595 (1976)..... 12

People v. Greenblatt, 72 A.D.2d, 587 (Second Dept. 1979)..... 11

People v. Griffin, (7 N.Y.2d, 511, 516)..... 14

People v. Idlett, 51 A.D.2d 752 (Second Dept. 1976)..... 18

People v. Morales, 17 A.D.2d, 999..... 15

People v. Munk, 59 A.D.2d 915 (Second Dept. 1977..... 17

People v. Nixon, 21 N.Y.2d 338 (1967)..... 12

People v. Serrano, 15 N.Y.2d, 304 (1965)..... 12

IN THE

SUPREME COURT OF THE STATE OF NEW YORK

OCTOBER TERM, 1981

NO.

MARK GRANATO,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

QUESTIONS PRESENTED

(1) Whether a Court can properly take a plea of guilty from a defendant where his recitation of the facts do not clearly establish the elements of the crime to which he is pleading guilty.

(2) Whether the Court denied petitioner's due process of law by denying him the opportunity to withdraw his plea, and by also denying him an adjournment to make a formal motion to withdraw his plea.

(3) Whether as a matter of due process, the trial court should have made it clear to the petitioner that he was pleading guilty to crimes concerning which his factual statements may have been insufficient. In that regard, the question is whether the trial court should have pointed out that fact to determine whether petitioner was then; knowingly, voluntarily and intelligently waiving his right to go to trial.

Petitioner, MARK GRANATO, respectfully prays that this Court issue a Writ of Certiorari to review the Order of the Supreme Court of the State of New York, Appellate Division, Second Department, dated April 20, 1981, which affirmed his conviction rendered by the judgment of the Supreme Court of the State of New York, Kings County on September 8, 1980, convicting him of Manslaughter in the First Degree, upon his plea of Guilty, and sentencing him to a prison term of 5-15 years. A co-defendant, COSTABILE FARACE received a term of prison of 7-21 years.

A motion for reargument and modifications was made to the Appellate Division, Second Department, which was denied by Order of the Appellate Division, dated May 20, 1981, and Leave to Appeal to the Court of Appeals of the

State of New York was denied by Associate Justice Meyer by Certificate Denying Leave dated June 18, 1981, which was received by petitioner's attorney on or about June 22, 1981.

Petitioner is presently incarcerated and is serving his sentence.

JURISDICTION

Jurisdiction in this Court is invoked under Title 28, U.S. Code, Section 1257(3) and Rule 19, Subdivision 1 of the rules of this Court. The judgment sought to be reviewed is the judgment of the Supreme Court of the State of New York, Appellate Division, dated April 20, 1981.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions are whether petitioner's rights under the due process clause of the Fourteenth Amendment was violated in permitting him to plead guilty to crimes where the elements were not established and in refusing to allow him to make a motion to withdraw such plea prior to his sentence.

FACTS

Petitioner and his co-defendant, FARACE, pleaded guilty on the same day to the crime of Manslaughter in the First Degree and the Court asked each of them to explain his role in the slaying of a youth which occurred in Staten Island, New York.

Apparently, a group of young men, who had been drinking, met the deceased in New York and they all repaired to a park section of Staten Island where there may have been some attempt to engage in sexual activity with the victim.

At the point where some of this conduct was about to take place, a melee ensued and four or more of the people involved struck the decedent who died of his wounds. There were multiple indictments and the petitioner and FARACE pleaded guilty to a reduced charge of Manslaughter as did two other defendants who are not involved in this Writ of Certiorari.

The events which took place were communicated by all of the defendants, but each one's role in the tragic occurrence was different, so that the propriety of the Court's accepting the plea from each must be in part based upon a different recitation of each defendant of his involvement of the crime, which will be set forth hereafter.

Petitioner was initially charged with Murder. The case had always been before Mr. Justice Barlow, in the Supreme Court, Richmond County. After pre-trial motions were made, and in the middle of a hearing involving the propriety of the line-up conducted by the police, all motions were withdrawn and FARACE and GRANATO entered their pleas.

Thereafter, Mr. Justice Barlow suffered a heart attack and the sentencing was adjourned by telephone for approximately two or three months. Then the sentencing first came on before a new Judge, Mr. Justice Owens, during which time the defenants had been allowed to remain at liberty. The Court refused to allow FARACE's new attorneys to withdraw their plea of guilty and the Court then refused to allow an adjournment so that counsel could make formal written motions to that effect.

Counsel for FARACE specifically told the sentencing Court that he believed that certain issues should be preserved for appeal and that he was of the opinion at that time that the plea was insufficient since the facts elicited from Petitioner, FARACE, indicated possible justification or self-defense. FARACE had stated that he was struck by the decedent first who had cut petitioner's face with a knife. He, thereafter, reacted to the shock of being

stabbed and he was also quite drunk at the time.

When the case came on for sentencing, FARACE changed attorneys and his new attorney, MARTIN LIGHT, appeared with him on September 8, 1980 and advised the Court that he thought that the entry of the plea was insufficient because the facts did not support the plea. Mr. Light asked for time to put in a written motion asking for the withdrawal of the guilty plea, but the Court denied that application and sentenced FARACE to 7-21 years.

The Court allowed Mr. Light to orally discuss the merits of his contentions and in fact, the Court probably can be viewed as having actually denied, not only the adjournment but the substantial portion of the motion itself, to withdraw the plea.

The Petitioner, MARK GRANATO, pleaded guilty to the same charge that FARACE did, on the same day and before the same Judge and he was also asked his version of the events on the night of the slaying. This petitioner was also sentenced at the same time as petitioner, FARACE. His attorney also pointed out that the minutes were defective and petitioner wanted to withdraw his plea.

Before accepting the reduced plea from GRANATO, the Court asked him to relay in his own words what actually happened on October 8, 1979. Petitioner said:

"DEFENDANT GRANATO" After we went into Wolfe's Point, I seen they were blowing with the black guy. The white kid tried to pull down my zipper, so I pulled him out of the car and I punched him. The black kid came out of the car and I punched him to the ground. Then, I aided and abetted my co-defendants in causing physical damage to them.

THE COURT: You were there when the others hit him with the wood?

DEFENDANT GRANATO: Yes.

THE COURT: You punched him?

DEFENDANT GRANATO: Yes.

THE COURT: When you punched him, did he go to the ground, did he fall down?

DEFENDANT GRANATO: Yes.

THE COURT: Did you punch him before he was hit with any wood?

DEFENDANT GRANATO: Yes.

THE COURT: For the joint intention to assist the other three or four, whatever?

DEFENDANT GRANATO: Yes."

It is readily apparent that GRANATO advised the Court that he only punched the decedent once. He did not say that he used a weapon, or any implement of any type, but he only stated that he struck the decedent one time with his fist. In fact, as far as that one punch is concerned, petitioner said that it was in retaliation for someone trying to pull down the zipper on his pants so that in addition to the question of whether one punch can, in law, constitute a crime of Manslaughter in the First Degree, there is also the question of self-defense or justification.

On the day of sentencing, after Mr. Light indicated that the plea minutes were defective as far as FARACE

was concerned, GRANATO's attorney also sought a postponement of the sentence. The lawyer did not specifically seek to withdraw the plea but in view of Mr. Light's statement and in view of the fact that GRANATO's lawyer was obviously dissatisfied with the proceedings, the Court should have examined the plea minutes which it would have found were clearly defective.

In addition, the Court was obviously under the impression that GRANATO's attorney was taking a similar position as FARACE's attorney, because the Court said:

> "...I see no basis why I should accept your request to withdraw the plea, and I am not going to accept it. You can take it from there and do what you want to do, but I am telling you right now I will not accept the request for a motion to withdraw the plea.
>
> Then, if Mr. Light wants to appeal or you want to appeal, that is your right."

Thereafter, GRANATO's lawyer made many references to the fact that the minutes were insufficient and he pointed out that GRANATO's role in the incident did not constitute a sufficient basis for the plea that was taken.

It was absolutely clear that the sentencing Judge was totally aware of the fact that both petitioners claimed that their pleas were defective and they wanted to withdraw them before sentencing was ever imposed.

POINT I

THE PLEA MINUTES CONCLUSIVELY DEMONSTRATED THAT THERE WAS AN INSUFFICIENT FACTUAL BASIS FOR THE ENTRY OF THE PLEA HEREIN. THE COURT SHOULD HAVE ALLOWED GRANATO TO WITHDRAW HIS PLEA.

Petitioner, MARK GRANATO, appealed to the Appellate Division on the issue of whether or not the Court acted properly in accepting his plea. It was contended that his factual recitation was even less sufficient than FARACE's because he only punched the decedent one time, apparently after the decedent or someone else tried to pull down the zipper to his pants.

GRANATO told the Court:

"DEFENDANT GRANATO: After we went into Wolfe's Pond, I seen they were blowing with the black guy. The White kid tried to pull down my zipper, so I pulled him out of the car and I punched him. The black kid came out of the car and I punched him to the ground. Then I aided and abetted my co-defendants in causing physical damage to them.
THE COURT: You were there when the others hit him with the wood?
DEFENDANT GRANATO: Yes.
THE COURT: You punched him?
DEFENDANT GRANATO: Yes.
THE COURT: When you punched him, did he go to the ground, did he fall down?
DEFENDANT GRANATO: Yes.
THE COURT: Did you punch him before he was hit with any wood?
DEFENDANT GRANATO: Yes.
THE COURT: For the joint intention to assist the other three or four, whatever?
DEFENDANT GRANATO: Yes."

It is submitted that the cases alluded to herein, clearly show that there was no basis upon which the plea of Manslaughter could easily rest, and the Court should not only have allowed GRANATO to withdraw his plea, but should have adjourned the case in order to let counsel make a motion on papers.

The only difference between petitioner, GRANATO's position and that of co-petitioner, FARACE, was that the sentence minutes, as far as GRANATO was concerned, were less explicit as far as whether he wanted to withdraw his plea is concerned. We submit that it would make no difference as far as the defectiveness of the factual basis for the plea is shown, and the Court, on its own, should not entertain the plea or should allow it to be withdrawn. Like FARACE, GRANATO's counsel also cast doubt upon the sufficiency of the plea, and it is clear from reading all of the sentence minutes that the court thought GRANATO was unhappy with his plea and was under the impression that his attorney was taking the same position as FARACE's lawyer, in that he wanted his plea back. The Court actually told GRANATO's counsel:

"I see no basis why I should accept your request to withdraw the plea, and I am not going to accept it. You can take it from there and do what you want to do, but I am telling you right now I will not accept the request for a motion to withdraw the plea.

Then, if Mr. Light wants to appeal or you want to appeal, that is your right."

Thereafter, GRANATO's counsel made many references to the fact that the plea minutes were insufficient and he pointed out that GRANATO's role in the events did not consitute a sufficient basis for the plea that was taken.

The recent case of People v. Greenblatt, 72 A.D.2d, 587 (Second Dept. 1979) involved a plea taken to the crime of Reckless Endangerment in the First Degree, but when the defendant was asked to relate the facts upon which he was pleading guilty, he said that he fired his weapon neither "in the vicinity" nor "in the direction" of the complainant, but into an empty van about fifty feet away. This Court concluded that that statement did not constitute the crime pleaded to. This Court said that where a sufficient factual foundation is not laid for the acceptance of the plea, it is incumbent upon the Court not to proceed (Emphasis added), without advising the defendant that the facts related did not constitute an admission of the crime to which the defendant casts doubt upon his guilt,

the Court had to offer him an opportunity to withdraw his plea. In that case an application was orally made by new counsel at the time of sentence to withdraw the plea, and the Court said that that application should have been granted.

It is most respectfully submitted in this case, the petitioner did not confess to the elements which would constitute Manslaughter in the First Degree and, in fact, he told the Court that he was only retaliating to an attack made upon him with a knife or weapon which caused his face to be cut. Certainly, had the petitioner come to trial, there would have been a reasonable possibility that he would have been found not guilty, and the Court should not have taken the plea. Not only that, when it was later pointed out to the Court upon the date of sentence that the plea was insufficient, the Court, at the very least, should have read the plea minutes, considered the application very carefully and, on the facts that were elicited in this case, the motion to withdraw should have been granted.

If one of the elements is missing, or the facts do not establish the crime, the Court cannot accept the plea. People v. Gina, M. M., 40 N.Y.2d, 595 (1976); People v. Serrano, 15 N.Y.2d, 304 (1965); People v. Nixon, 21 N.Y.2d 338 (1967); People v. Beasly, 25 N.Y.2d, 483 (1969).

In People v. Serrano, supra, the defendant, indicted for Murder in the First Degree, stood trial under the representation of three assigned counsels. Following the selection of the jury and the opening statement by the prosecution, he pleaded guilty, with the knowledge of counsel and consent of the District Attorney, to Murder in the Second Degree, and was sentenced to a term of thirty years to life which the Appellate Division affirmed.

The New York Court of Appeals reversed the judgment and remanded with a direction that the defendant be permitted to replead. It found that the Court which accepted his plea of guilty first heard the People's version of the crime and then interrogated the defendant, "not only as to the circumstances surrounding the change in plea but also as to the facts concerning the homicide itself." What the Trial Court thus learned, led the Court to the opinion that the homicide, the commission of which the defendant admitted, was more consonant to a lesser charge of Manslaughter in the First Degree. As Fuld, J., put it in his opinion:

"However, instead of rejecting the change of plea or advising the defendant that his admissions might very well not amount to the crime to which he pleaded guilty and inquiring further whether he, nevertheless, wished to plead guilty -- for instance, to avoid the risk of a jury verdict of first degree murder -- the trial judge took it upon himself to resolve these differences by deciding that the defendant was not subject to belief. It is our view, as it was that of VALENTE, J., dissenting in the Appellate Division, that the resolution of the inconsistencies in the versions of occurrence was not within the province of the court. In the words of JUDGE VALENTE, 'Those were questions for a jury to decide in determinating defendant's guilt or innocence unless there was the interposition of a valid plea of guilt'".

He continued:

"Under the circumstances here presented, we do not see how it may properly be said that such a 'valid plea of guilt' was interposed. It is true, as this Court declared in People v. Griffin, (7 N.Y.2d, 511, 516) that, '(a)fter a plea to a lesser crime has been accepted, the factual basis of the crime confessed can ordinarily be found only in the language of the plea'. But, where, as is the usual case today, the trial court, before accepting the plea of guilty, properly inquires of the defendant as to the circumstances and details of the crime to which he is admitting his guilt, the mere mouthing of the word 'guilty' may not be relied upon to establish all the elements of that crime. In such case, the requisite elements should appear from the defendant's own recital and, if the circumstances of the commission of the crime as related by the defendant do not clearly spell out the crime to which the plea is offered, then the Court should not proceed, without further inquiry, to accept the guilty plea as a valid one."

It is important to note that Judge Fuld took cognizance of the fact that no application was made by Serrano on his behalf to withdraw the plea of guilty, either before or at the time of sentence. We stress this fact because Fuld, J. made it clear beyond contradiction in the Serrano case -- and we submit in the case at bar -- that:

> "***the trial judge should not, in the first instance, have accepted his plea of guilty. It was, instead, his duty to refuse the plea and order the trial continued or, more appropriately, to advise the defendant that his admissions did not necessarily establish guilt of the crime to which he was pleading and to question him further both with regard to his story of the crime and as to the possible disposition of his request to change his plea. (Cf. People v. Morales, 17 A.D.2d, 999, supra)".

It is true that Judge Fuld conceded that the Court could ultimately have accepted a plea of guilty, but only if the defendant understood that he had the option to withdraw the plea of guilty but persisted in the opportunity to plead, "perhaps to avoid the risk of conviction upon a trial of the more serious crime charged in the indictment". This possible acceptance of the plea was, however, joined by the caveat that "***the Court should take all precautions to assure that the defendant is aware of what he is doing. Manifestly, no such cautionary effort was here

made". Of course, in the case at bar, appellant did attempt to withdraw his plea prior to sentence.

Since the Serrano case, many other courts have had to deal with the problem of trial courts taking pleas without sufficient inquiry and where the facts did not establish the crime pleaded to.

In People v. Beasly, supra, at page 487, the Court of Appeals said, "Although defendant's statement at sentence is somewhat vague, it may be interpreted to mean that he did not participate in the robbery forming the basis of the felony-murder charge. This, if true, would remove one of the basic elements of the crime and demand a reversal". The Court then went on to add that where the element of the crime was missing a plea would have to be vacated.

It is submitted that the case at bar goes much further than either Serrano or Beasly. In Serrano there was no motion to withdraw the plea, unlike this case, and in Beasly the defendant's statements were vague, also unlike this case, because here the petitioner categorically stated that he acted in self-defense.

In People v. Ellsworth, 57 A.D.2d, 768 (First Dept. 1977), the defendant was charged with forging an endorsement on a check, but when he was questioned, while he admitted writing the name, he contended that he had verbal permis-

sion to do so. Thus, a question of a possible defense and lack of criminal intent was raised and the Appellate Division reversed the judgment and vacated the plea.

There was a similar problem in People v. Munk, 59 A.D.2d, 915 (Second Dept. 1977), where the Court reversed a manslaughter conviction where the defendant made statements which indicated that the gun had been pulled on him and that there might be a self-defense issue..

This Court said, "Where -- as in the case at bar, the Court, at the plea hearing, elicits information from the defendant which casts doubt upon his guilt of the crime to which he is pleading, the Court should not proceed to accept the guilty plea without further inquiry". (Citations omitted).

Likewise, in People v. Cullen, 57 A.D.2d 903 (Second Dept. 1977) the Court also accepted the idea that a Court should not accept the plea of guilty where the "requisite elements" do not appear from the defendant's own recitation and where the circumstances of the crime as related by the defendant do not make out the crime pleaded to. Of course, the defendant could always continue to take the plea pursuant to Serrano or those other decisions where the crime was not made out but only where other special precautions

were taken, and the defendant knew what he was doing, waived that requirement and where other careful inquiry was made. This, of course, is not the case at bar, since there was no discussion along those lines. Of course, merely mouthing the word "guilty" cannot be relied on to establish the elements of the crime since each element should be contained within the defendant's own recital of the facts which should form the basis in fact for the taking of the plea. People v. Etoli, 57 A.D.2d 973 (Third Dept. 1977); People v. Idlett, 51 A.D.2d 752 (Second Dept. 1976).

Petitioner recognizes the law that even if the facts did not make out the crime to which the plea has been taken, the federal constitution may not require a reversal where the taker of the plea clearly understood the nature of what he was doing and waived all of his relevant constitutional rights. We submit, however, that in such a case, careful and further inquiry should be made so that the defendant clearly knows what he is pleading guilty to, even though his recitation of the facts is sufficient.

If he knew that his conduct did not amount to the crime pleaded to, he might have decided not to take the plea. Thus, the legal sufficiency of the facts is paramount in determining whether or not he waived his constitutional

rights, and, knowingly, voluntarily and intelligently took the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Domenica v. United States, 292 F.2d 483 (1st Cir. 1961); Adkins v. United States, 298 F.2d 842, cert. den. 370 U.S. 954 (8th Cir. 1962); Edwards v. United States, 256 F.2d 707 (D.C. Cir. 1958).

We believe that there is clearly no basis in law or fact for the taking of petitioner's plea in this case. We also state that in view of the serious nature of the crime and the length of the sentences involved, that the deprivation of due process to the petition was accentuated.

We most respectfully suggest that this is a proper case for this Court to consider.

CONCLUSION

THE PETITION OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

STANLEY M. MEYER
ATTORNEY FOR PETITIONER
16 COURT STREET
BROOKLYN, NEW YORK 11241

MEYER, LIGHT & LONDON
OF COUNSEL

At a Term of the Appellate Division of the State of New York, Second Judicial Department, held in Kings County on April 20, 1981.

HON. MILTON MOLLEN, Presiding Justice,
HON. JOHN P. COHALAN, Jr.,)
HON. CHARLES MARGETT,) Associate Justices
HON. FRANK D. O'CONNOR.)

---X

The People of the State of New York,

Respondent,

v/ ORDER

Robert DeLicio, Costabile Farace and Mark Granato,

Appellants.

---X

In the above entitled cause, the above named Robert DeLicio, Costabile Farace and Mark Granato, defendants in this action, having appealed to this Court from three judgments (one as to each of them) of the Supreme Court, Richmond County, all rendered September 8, 1980, convicting each defendant of manslaughter in the first degree, upon his respective plea of guilty, and sentencing defendants DeLicio and Granato to prison terms of 5 to 15 years, and defendant Farace to a prison term of 7 to 21 years; and the said appeals having been argued by John M. Murphy, Jr., Esq., of counsel for appellant DeLicio, argued by Stanley M. Meyer, Esq., of counsel for appellants Granato and Farace (separate briefs filed), and argued by George E. McVay, Esq., of counsel for respondent, due deliberation having been had thereon; and upon this court's opinion and decision slip heretofore filed and made a part hereof, it is

ORDERED that the judgments as to defendants Granato and Farace are hereby unanimously affirmed, and it is further

ORDERED that the judgment as to defendant DeLicio is hereby modified, as a matter of discretion in the interest of justice, by reducing his sentence to a period of imprisonment of two to six years, and, as so modified, said judgment is hereby unanimously affirmed, and it is further

ORDERED, that with respect to defendants DeLicio and Farace, the cases are hereby remitted to the Supreme Court, Richmond County, for further proceedings pursuant to CPL 460.50 (subd. 5).

E N T E R

IRVING N. SELKIN

Clerk of the Appellate Division

STATE OF NEW YORK

COURT OF APPEALS

BEFORE: HON. BERNARD S. MEYER, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

Certificate Denying Leave

COSTABILE FARACE and MARK GRANATO,

Defendants-Appellants.

I, BERNARD S. MEYER, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein,* there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at New York, New York
June 18, 1981

BERNARD S. MEYER
Associate Judge

Order of the Appellate Division, Second Department, entered April 20, 1981, affirming two judgments of the Supreme Court, Richmond County (one as to each defendant), both rendered September 8, 1980, convicting defendants of manslaughter in the first degree.

*Description of Order: